

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**BUCKEYE EGG FARM, L.P.,
CROTON FARM, LLC, AND
ANTON POHLMANN,**

Defendants.

**CIVIL ACTION NO.
3:03 CV 7681**

(Hon. David A. Katz)

CONSENT DECREE

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint and an Amended Complaint in this action, alleging that Defendants violated Section(s) 113, 114, 165, 502 and 503 of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413, 7414, 7475, 7661a, & 7661b, including violations of 40 C.F.R. Part 52, Subpart A, Section 52.21, and the Ohio State Implementation Plan (Ohio SIP), codified at 40 C.F.R. Part 52, Subpart KK (40 C.F.R. §§ 52.1870-52.1919). The Amended Complaint alleges that these violations occurred and are occurring at the Defendants' commercial egg production Locations in Ohio, specifically, (i) the Croton Location, located in Licking County, Croton, Ohio, (ii) the Marseilles Location, located in Wyandot County, Harpster, Ohio, and (iii) the Mt. Victory Location, located in Hardin County, LaRue, Ohio (collectively, "the Locations").

Defendant Buckeye Egg Farm, L.P. ("Buckeye") is a limited partnership organized under the laws of Delaware, and is a continuation of the partnership originally known as AgriGeneral Company, L.P. Defendant Croton Farm LLC ("Croton Farm") is a limited liability corporation

organized in Delaware on October 1, 1997 and has a one percent ownership interest in, and is the general partner of, Buckeye Egg Farm, L.P. Croton Farm LLC has two members: Anton Pohlmann and Poultry Investors Group, Inc. Poultry Investors Group, Inc. is an Ohio corporation and Anton Pohlmann is its sole shareholder. Defendant Anton Pohlmann has a ninety-nine percent ownership interest in, and is the limited partner of, Buckeye Egg Farm, L.P., and owns or owned the properties and buildings utilized by Buckeye for the commercial production of eggs at its Ohio Locations. These properties and buildings are or were leased to Buckeye.

Defendants do not admit any fact, interpretation or application of law, violation, or liability to the United States or jurisdiction except to the extent necessary to ensure enforcement of this Consent Decree arising out of the transactions or occurrences alleged in the Amended Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest. NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. For purposes of this Consent Decree, Defendants agree that this Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. § 1391 and 1395, and Section 113(b) of the CAA, 42 U.S.C.

§ 7413(b), because the Marseilles and the Mt. Victory Locations, two of the three Locations at which the violations alleged herein occurred, are located in the Western Division of this District. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree or such action and over Defendants, and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Amended Complaint states claims upon which relief may be granted pursuant to Sections 113, 114, 165, 502 and 503 of the CAA, 42 U.S.C. §§ 7413, 7414, 7475, 7661a, & 7661b. Defendants waive service of the Amended Complaint and accept same for purposes of entering into this Consent Decree.

3. Notice of the commencement of this action has been given to the State of Ohio as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. PARTIES BOUND AND NOTICE OF TRANSFER

4. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon Defendants and their partners, officers, agents, successors, assigns, and all persons acting on their behalf.

5. Defendants have sold the assets comprising the property at the Croton Location to Ohio Fresh Eggs, LLC ("Ohio Fresh"). Defendants are also currently negotiating the sale of assets comprising the Mt. Victory and Marseilles Locations to Ohio Fresh. These transfers will be conditioned upon Ohio Fresh's agreement to undertake the obligations required by this Decree, including the requirements relating to the Croton Location, and to impose these same obligations upon any subsequent transferees of these properties, as provided in a written agreement between Defendants and Ohio Fresh, enforceable by the United States as a third-party beneficiary of such agreement. This Consent Decree remains enforceable against Defendants

regardless of these transfers, as set forth in Paragraphs 6 and 7, infra, although the Parties recognize that Defendants and Ohio Fresh intend to enter into certain indemnification agreements between themselves.

6. Unless otherwise agreed to in writing by EPA, no change in ownership, corporate, or partnership status relating to any of the Buckeye Locations, or conveyance of title, easement, or other interest in the Buckeye Locations, including but not limited to any lease or transfer of assets or real or personal property, will alter the Defendants' obligation to comply with the requirements of this Consent Decree or to ensure compliance by any successor or assign of the Defendants, regardless of whether the Defendants continue to exist following the transaction.

7. It shall be Defendants' obligation to require compliance by any person purchasing, leasing or operating any of the Buckeye Locations with the relevant portions of the Consent Decree, and to reserve the right to monitor compliance by that person. Defendants shall remain liable to EPA for any stipulated penalties that may accrue due to any non-compliance by that person. In all cases it shall be Defendants' obligation with respect to any portion of the Buckeye Locations conveyed or leased to ensure access to property and information pursuant to Section X of this Consent Decree. Any purchase and sale agreement or lease or other instrument of conveyance for the Buckeye Locations shall contain a notice that the Buckeye Location at issue is the subject of this Consent Decree, setting forth the case caption and index number, and the Court having jurisdiction, and a memorandum of agreement setting forth this notice shall be filed with the local property recorder's office in connection with the consummation of any such sale or lease.

8. Except with respect to the anticipated transfer of the Marseilles and Mt. Victory locations to Ohio Fresh, Defendants, in addition to any notification required by the CAA, shall

notify EPA, the United States Attorney for the Northern District of Ohio, Western Division, and the United States Department of Justice, in accordance with Section XVIII of this Decree (Notices), at least thirty (30) days prior to a change in the operational and/or ownership control of any portion of any of the Buckeye Locations, including but not limited to the conveyance of title, easement, or other interest, including a leasehold interest. This notice shall also include a description of both the current and expected future activities on that portion of the Buckeye Location or Locations to be conveyed, leased, or otherwise alienated. At least fifteen (15) days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee. Any transfer of ownership or operation of the Locations without complying with this Paragraph constitutes a violation of this Decree.

9. Defendants shall provide a copy of this Consent Decree to all officers, management employees, and agents whose duties might reasonably include compliance with any provision of this Decree. Defendants shall provide to each contractor hired to perform any of the Work (as defined herein) required by this Consent Decree or its Attachments (and to each person representing the Defendants with respect to the Work), a copy of all Sections of this Decree and/or Attachments relevant to the contractor's employment, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree and its Attachments. Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Defendants nonetheless shall be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. Nothing in this Consent Decree shall be construed to prevent Defendants from enforcing any contractual obligations of their contractors or subcontractors.

10. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any action necessary to comply with the provisions of this Consent Decree, subject to any claim of force majeure under Section XIII (Force Majeure).

III. DEFINITIONS

11. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Buckeye Location” shall mean any one of Defendants’ commercial egg production locations in Ohio, specifically, the Croton Location, located in Licking County, Croton, Ohio, the Marseilles Location, located in Wyandot County, Harpster, Ohio, and the Mt. Victory Location, located in Hardin County, LaRue, Ohio (collectively, “the Buckeye Locations”).

“Compliance Schedule” means the document attached hereto as Attachment A;
“Complaint” or “Amended Complaint” shall mean the complaint, as amended, filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXV);

“Day” shall mean a calendar day unless expressly stated to be a working day.
In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

“Defendant(s)” shall mean Buckeye Egg Farm, L.P., Croton Farm LLC, and Anton Pohlmann;

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

“Interest” shall mean interest at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. Such interest shall be compounded annually on October 1st of each year. “Notify” and “Submit” and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail, or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federal holiday, the delivery, deposit, or dispatch shall be due on the next working day;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Parties” shall mean the United States and Defendants;

“Section” shall mean a portion of this Decree identified by a Roman numeral;

“State” shall mean the State of Ohio;

“United States” shall mean the United States of America, acting on behalf of EPA;

“Work” shall mean all activities Defendants are required to perform under this Consent Decree, together with its Attachments, except those required by Section XV (Information Retention).

IV. GENERAL PROVISIONS

12. Compliance with Applicable Law: All Work undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state and local laws, permits, and regulations not addressed in this Consent Decree, including, without limitation, federal and state regulations governing the generation, treatment, storage, transport, and disposal of hazardous waste.

13. Permits: Where any portion of the Work requires a federal, state, or local permit or approval not addressed in this Consent Decree, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

14. The Defendants may seek relief under the provisions of Section XIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining any permit required for the Work, provided that Defendants have used due diligence in seeking to obtain such permit .

15. This Consent Decree is not, and shall not be construed to be, a permit or modification of a permit issued pursuant to any federal, state, or local statute, ordinance, or regulation.

V. PERFORMANCE OF THE WORK BY DEFENDANTS

16. Defendants shall comply with the provisions, terms, and schedules for operating and upgrading the Buckeye Locations as set forth in Attachment A, which is incorporated by reference into this Consent Decree.

17. If, prior to Defendants' Request for an Acknowledgment of Completion, pursuant to Section IX of this Consent Decree, EPA determines that Defendants' performance of the Work is inadequate or incomplete, EPA will notify Defendants in writing of the activities that must be undertaken to correct or complete the Work, and will set forth in the notice a reasonable period for Defendants to satisfactorily correct or complete the Work. Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to any right provided in this Consent Decree to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution).

VI. SUBMISSIONS REQUIRING EPA APPROVAL

18. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission or (e) any combination of the above.

19. If the submission is approved pursuant to Paragraph 18(a), Defendants shall take all actions required by the plan, report, or other item, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 18(b) or (c), Defendants shall, upon written direction of EPA take all actions required by the approved plan, report, or other items that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only any conditions imposed by EPA or any disapproved portions under Section XIV of this Decree (Dispute Resolution).

20. If the submission is disapproved in whole or in part pursuant to Paragraph 18(c) or (d), Defendants shall, within forty-five (45) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval. Any Stipulated Penalties applicable to the original submission as provided in Section XII of this Decree shall accrue during the forty-five (45)-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, Defendants shall be deemed to have failed to submit a plan, and the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

21. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with this Section , subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek Stipulated Penalties as provided in the preceding Paragraphs.

22. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon written approval by EPA, be enforceable under this Consent Decree. In the event EPA approves or conditions a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, such approval shall be in writing, and the approved, modified or conditioned portion shall be enforceable under this Consent Decree.

VII. REPORTING REQUIREMENTS

23. Defendants shall submit quarterly reports as set forth in Section III of Attachment A hereto, disclosing the status and progress of Work under this Consent Decree.

a. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify the United States of such violation and its likely duration in writing within ten (10) working days of the day Defendants first become aware of the violation, with an explanation of the likely cause of the violation and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall include a statement to that effect in the report. Defendants shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days of the day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the requisite notice for purposes of Section XIII (Force Majeure).

b. In the case of any violation or other event that may pose an imminent and substantial endangerment to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but not later than twenty-four (24) hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

24. All reports shall be submitted to the persons designated in Section XVIII of this Consent Decree (Notices). The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CAA or implementing regulations, or by any other federal, State, or local law, regulation, permit, or other requirement. Any information provided pursuant to this Consent Decree may be used by the United States or Defendants in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. CERTIFICATIONS

25. Whenever this Consent Decree, including Attachment A, requires the Defendants to submit a work plan, design, study, report, or other document, it shall be signed and certified as accurate by a responsible corporate officer as defined in 40 C.F.R. § 270.11(a)(1), or his duly authorized representative. This certification shall include the following language:

I certify under penalty of law that this document and any attachments to it were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing and willful submission of a materially false statement.

IX. COMPLETION OF THE WORK

26. Within ninety (90) days after Defendants conclude that all phases of the Work required under any section of Attachment A have been fully performed, Defendants shall submit one or more written reports by qualified professionals in the relevant technical fields, certifying in compliance with Section VII of this Consent Decree that the Work required by that section of Attachment A has been completed in full satisfaction of its requirements or that any failure to complete Work has been disclosed to EPA and rectified in accordance with Paragraphs 23(a) and 17 of this Consent Decree. These reports shall indicate the case name and civil action number, and shall be certified in accordance with Section VII.

27. If EPA so requests, Defendants shall schedule and conduct an inspection of the Buckeye Locations, to be attended by Defendants and EPA, to review the certified portion of the Work. The State shall also be invited to attend.

28. If, after review of the final written reports and certifications, and any inspection, EPA determines that any portion of the certified Work has not been completed in accordance with this Consent Decree and Attachment A, EPA will notify Defendants in writing of the activities that must be undertaken to complete this portion of the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and Attachment A, or will require Defendants to submit a schedule to EPA for approval pursuant to Section VI (Submissions Requiring Agency Approval). Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right, if any, to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution). Upon completion of these activities, Defendants shall submit revised written reports and certifications for the completed portion of the Work.

29. Within one hundred twenty (120) days of Defendants' completion of any remaining Work performed pursuant to Paragraph 28 , or such other period as may be approved by EPA, Defendants shall submit a Request for Acknowledgment of Completion, referencing all final written reports and certifications submitted pursuant to Paragraph 26 or 28, supra, and Attachment A. Following its receipt of the Request for Acknowledgment of Completion, EPA may request an inspection or provide notice of activities that must be undertaken to complete the Work, as set forth in Paragraph 28. If EPA concludes, based on the initial or any subsequent Request for an Acknowledgment of Completion by Defendants, and after a reasonable opportunity for review and comment by the State, that the Work required under Attachment A has been performed in accordance with this Consent Decree, and that any failure to complete Work has been disclosed to EPA and rectified in accordance with Paragraphs 23(a) and 17 of this Consent Decree, EPA will so notify the Defendants in writing, which notice shall constitute the Acknowledgment of Completion.

X. ACCESS

30. Commencing upon the date of lodging of this Consent Decree, Defendants agree to provide the United States and its representatives, including its agencies, employees and authorized agents (including contractors and subcontractors), access at all reasonable times to the Buckeye Locations and any other property owned or controlled by Defendants or accessible to Defendants by contract, to which access is required for the implementation of this Consent Decree, for the purposes of conducting any activity related to this Consent Decree, including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;

- c. Conducting investigations relating to the Work;
- d. Obtaining samples relating to the Work;
- e. Inspecting and copying records, operating logs, contracts, or other

documents maintained or generated by Defendants or their agents related to the Work, subject to Defendants' right to assert the existence of privilege in accordance with Paragraph 64 of this Consent Decree; and

- f. Assessing Defendants' compliance with this Decree.

31. The activities authorized by this Section include, but are not limited to:

- a. Interviewing and obtaining oral, written, or recorded statements from personnel involved in activities pertaining to the Work required by this Consent Decree, whether such personnel are employed by the Defendants or by their contractors or subcontractors;

- b. Inspecting, reviewing, and copying all documents that relate to activities pertaining to the Work required by this Consent Decree, subject to Defendants' right to assert the existence of privilege in accordance with Paragraph 64 of this Consent Decree;

- c. Observing, photographing, or otherwise documenting the performance or completion of activities pertaining to the Work required by this Consent Decree; and

- d. Conducting such other monitoring and investigative activities as EPA deems necessary to monitor activities pertaining to the Work required by this Consent Decree.

32. At the time of entering a Buckeye Location, EPA employees and representatives shall present valid credentials or other official authorization. The Defendants shall have the right to accompany EPA representatives throughout their presence at the Buckeye Location, and to monitor and record the investigative activities conducted by EPA, so long as such monitoring or recording does not delay or impede the investigative activities of EPA. If a recording of EPA's

investigatory activities is made by EPA, or the Defendants, a copy of the recording shall be provided to the other participant.

33. Defendants, upon request at the time of sampling, may obtain splits of any samples taken by the United States, EPA, the State, or their representatives, and, upon request, shall be provided with copies of the results of sampling, analysis, tests, or other raw data generated as a result of activities authorized under Paragraphs 30, 31 and 32 of this Consent Decree.

34. Notwithstanding the foregoing Paragraph or any other provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under the CAA and any other applicable statutes, regulations or permits.

XI. CIVIL PENALTY

35. Defendants will pay a civil penalty of Eight Hundred Eighty Thousand Five Hundred and Ninety Eight Dollars (\$880,598.00) to the United States for the violations enumerated in the Complaint in this action.

a. Within five (5) working days of Defendants' receipt of notice of the lodging of this Consent Decree with the Court, Defendants shall establish an interest bearing escrow account meeting the requirements of this Paragraph in a federally-insured bank duly chartered in the State of Ohio, and shall remit to the escrow account funds in the amount of Eight Hundred Eighty Thousand Five Hundred and Ninety Eight Dollars (\$880,598.00).

b. Within the same time frame, Defendants shall send to the United States, by overnight mail directed to the addresses specified in Section XVIII (Notices) of this Decree, copies of the documents establishing and funding the escrow account, together with information containing the identities of the bank and of the escrow agent, the bank account under which the escrow

account is established, and a bank statement or deposit slip showing the initial balance of the escrow account. The correspondence shall also reference the civil action number of this case, and the Department of Justice (“DOJ”) case number (90-11-2-06089).

c. All funds paid into the escrow account by Defendants shall remain in escrow and may not be withdrawn by any person except to make the payment required by Paragraph 35 of this Decree, unless the Court determines that entry of this Consent Decree is not in the public interest and declines to enter it as an order. If the Court declines to enter the Consent Decree as an order, all sums in the escrow account shall be governed by the Stipulation and Supplemental Stipulation of the Parties dated January 22, and 23, 2004. Copies of these Stipulations are attached hereto as Attachment B and C, respectively.

d. Within ten (10) working days of Defendants’ receipt of notice of entry of the Consent Decree by the Court, Defendants shall remit the penalty payment to the United States. Payment shall be made by Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the Northern District of Ohio, Western Division, referencing the DOJ Number 90-11-2-06089, and the U.S.A.O. file number. Payment shall be made in accordance with instructions to be provided to Defendants following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Ohio, Western Division. Any EFTs received at the U.S. D.O.J. lockbox bank after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-11-2-06089 and the civil action number of this case) to the United States in accordance with Section XVIII of this Decree (Notices).

36. In the event that the payment required by Paragraph 35 is not made in compliance with the terms of Paragraph 35, Defendants shall be subject to late charges by the United States in accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717 and 40 C.F.R. § 13.11. First, Defendants shall pay Interest on the unpaid balance at the rate established by the Secretary of Treasury pursuant to 31 U.S. § 3717. The Interest on the penalty shall begin to accrue on the 11th day following Defendants' receipt of notice of the entry of the Consent Decree, and shall continue to accrue at the rate specified through the date of payment. Such Interest shall be compounded each federal fiscal year. Second, Defendants shall pay a 6% per annum late fee on any principal amount not paid within ninety (90) days of the due date. Third, Defendants shall pay an administrative costs (handling) charge of fifteen dollars (\$15) for each month past the due date specified by the Consent Decree that it does not pay the penalty in full. Payments of Interest, late fees and handling charges made under this Paragraph shall be in addition to stipulated penalties provided in Section XII (Stipulated Penalties) or any other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Section. Payments made pursuant to this Paragraph shall be made in accordance with the procedures set forth in Paragraph 35.

37. Defendants agree that the payment of the Civil Penalty is not assignable or transferable to any other party in connection with any sale of assets pertaining to the Buckeye Locations.

38. Defendants shall not deduct the civil penalty paid under this Section in calculating their federal income tax.

XII. STIPULATED PENALTIES

39. If Defendants fail to pay the civil penalty required to be paid under Section XI of this Decree (Civil Penalty) when due, Defendants shall pay a Stipulated Penalty of \$1,000 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Section XI, Paragraphs 35 and 36, above. Stipulated Penalties shall be paid in accordance with Section XII, Paragraph 47, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraphs 35 above.

40. Defendants shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section XIII (Force Majeure). A violation includes failing to perform any of the Work required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

41. Compliance Milestones. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements of Attachment A:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$750	15th through 30th day
\$1,500	31st day and beyond

42. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

43. Subject to the provisions of Section XIV (Dispute Resolution), Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendants shall pay any Stipulated Penalty within thirty (30) days of receiving the United States' written demand, subject to the dispute resolution provision.

44. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

45. Stipulated Penalties shall continue to accrue as provided in Paragraph 43, above, during any Dispute Resolution, with Interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717 but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing,

together with Interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails, Defendants shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with Interest, within fifteen (15) days of receiving the final appellate court decision.

46. Defendants shall pay Stipulated Penalties for violations occurring between the date of lodging and the Effective Date of this Consent Decree within thirty (30) days of the Effective Date of this Decree.

47. Defendants shall, as directed by the United States pursuant to Paragraph 43 and 44, pay Stipulated Penalties owing to the United States by EFT in accordance with Section XI, Paragraph 35(d), above.

48. Defendants shall not deduct Stipulated Penalties paid under this Section in calculating their federal income tax.

49. If Defendants fail to pay Stipulated Penalties according to the terms of this Consent Decree, the United States shall be entitled to collect Interest on such penalties, as provided for in 31 U.S.C. § 3717.

50. Subject to the provisions of Section XVI of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for

Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CAA Defendants shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

XIII. FORCE MAJEURE

51. A "force majeure event" is any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

52. Defendants shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than five (5) days after the time Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendants shall also provide written notice, as provided in Section XVIII of this Consent Decree (Notices), within fourteen (14) days of the time Defendants first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude Defendants from asserting any claim of force majeure.

53. If the United States agrees that a force majeure event has occurred, the United States shall agree to extend the time for Defendants to perform the affected requirements for the time

necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XX of this Consent Decree (Modification).

54. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States' position shall be binding unless Defendants invoke Dispute Resolution under Section XIV of this Consent Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the evidence that such claimed force majeure event is a force majeure event; that Defendants gave the notice required by Paragraph 52; that the force majeure event caused any delay Defendants' claim was attributable to that event; and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

XIV. DISPUTE RESOLUTION

55. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendants that have not been disputed in accordance with this Section.

56. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) days from the date the dispute arises, unless that period

is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

57. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

58. The United States shall serve its Statement of Position within forty-five (45) days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

59. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

60. The United States shall respond to Defendants' motion within the time period provided in the Local Rules of this Court, unless the Parties stipulate otherwise. Defendants may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

61. In any dispute under this Paragraph, Defendants shall bear the burden of demonstrating that their position is consistent with this Consent Decree and the CAA and that Defendants are entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

62. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, not directly in dispute. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45, above. Except as otherwise prescribed by the Court, if Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XV. INFORMATION RETENTION

63. Until two years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of the Work under this Consent Decree. This record retention requirement shall apply regardless of

any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

64. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least ninety (90) days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA. Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law, or that otherwise qualify as confidential business information pursuant to 40 C.F.R. Part 2.

If Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports, or other information created or received pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

65. The Consent Decree in no way limits or affects any duty or obligation of Defendants to maintain records or information imposed by applicable federal or State laws, regulations, or permits.

XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

66. This Consent Decree resolves and constitutes a release of the civil claims of the United States for the violations alleged in the Amended Complaint filed in this action through the date of lodging of the Consent Decree. Provided that Defendants comply with this Consent Decree from the date of lodging of the Consent Decree through its Effective Date, these claims shall also be resolved through the Effective Date of this Consent Decree. Upon EPA's issuance of an Acknowledgment of Completion pursuant to Paragraph 29, these claims shall be finally resolved and released. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified herein.

67. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. Defendants reserve all legal and equitable defenses available to defend against enforcement of the provisions of this Consent Decree.

68. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Locations, whether related to the violations addressed in this Consent Decree or otherwise. Defendants reserve all legal and equitable defenses available to defend against such an assertion of any imminent and substantial endangerment.

69. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. The United States does not, by its consent to the entry of this

Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA.

70. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants.

71. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XVII. COSTS

The Parties shall bear their own costs in connection with this action and the Consent Decree, including attorneys' fees, except as otherwise authorized by applicable law.

XVIII. NOTICES

72. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-11-2-06089

Compliance Tracker
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5, AE-17J
77 W. Jackson Blvd.
Chicago, IL 60604

and

Director, Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mailcode 2241A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

To Defendants:

John D. Austin, Jr.
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037

David E. Northrop
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, OH 43215-6194

73. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

74. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIX. RETENTION OF JURISDICTION

75. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section XIV and XX, or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

76. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without written agreement of the Parties to this Consent Decree and approval by this Court. Changes to the technical and schedule provisions set forth in Attachment A hereto may be made without approval by the Court under the terms set forth in Attachment A, or upon written agreement between the Defendants and EPA.

77. In the event that a transferee of property under Section II of this Consent Decree should desire to become a party to this Consent Decree and subject to all its terms and provisions, it may do so upon written approval of the United States, in which event a supplemental signature page will be affixed to this Consent Decree and filed with the Court.

XXI. EFFECTIVE AND TERMINATION DATES

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court. Provided that all penalties are paid pursuant to Sections XI (Civil Penalty) and XII (Stipulated Penalties) of this Consent Decree, the Consent Decree shall be terminated as follows:

a. Following EPA's issuance of the Acknowledgment of Completion of the Work pursuant to Section IX of this Consent Decree, the parties may move jointly to terminate this Consent Decree based on their representations that all its requirements have been satisfied, and the Court may order such termination after conducting such inquiry as it deems appropriate.

b. If the United States does not issue an Acknowledgment of Completion of the Work following a request by the Defendants in accordance with Section IX of this Consent Decree, then Defendants may invoke Dispute Resolution under Section XIV, and subsequent judicial review under Paragraph 59, of this Decree.

79. Termination of this Consent Decree in accordance with Paragraph 78, supra, shall not terminate the requirements of Section XV (Information Retention), which shall terminate pursuant to the terms of that Section.

80. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice.

XXII. SIGNATORIES/SERVICE

81. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

82. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect .

83. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

84. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

85. This Consent Decree, including Attachments A, B, and C, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than these Attachments, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. FINAL JUDGMENT

86. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXV. APPENDICES

87. The following appendices are attached to and incorporated into this Consent Decree: "Attachment A" is the Compliance Schedule setting forth the Work required of the Defendants under this Consent Decree. "Attachment B" is the Stipulation to Dismiss, Without Prejudice, Plaintiff's Application for a Prejudgment Writ of Attachment, filed with the Court in this matter on January 22, 2004. "Attachment C" is the Supplemental Stipulation to the Stipulation to Dismiss, Without Prejudice, Plaintiff's Application for a Prejudgment Writ of Attachment, filed with the Court in this matter on January 23, 2004.


UNITED STATES DISTRICT JUDGE
Northern District of Ohio, Western Division

FOR PLAINTIFF UNITED STATES OF
AMERICA

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


By: _____
DEBORAH M. REYHER
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C.
(202) 514-4113

GREGORY A. WHITE
United States Attorney
Northern District of Ohio

By _____
ROBERT YOUNG 
Assistant United States Attorney
4 Seagate, Suite 308
Toledo, Ohio 43604

adl 0
By: _____
PHYLLIS HARRIS
Acting Assistant Administrator
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

By: _____
ROBERT A. KAPLAN /
Division Director
MYRON A. ENG
Attorney
Office of Regulatory Enforcement
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

_____
THOMAS V. SKINNER
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

MARY T. McAULIFFE
Associate Regional Counsel
United States Environmental Protection
Agency
77 West Jackson Blvd.
Chicago, IL 60604

FOR DEFENDANTS

Date: Jan. 30, 2004

ANTON POHLMANN

BUCKEYE EGG FARM, L.P.

By: Croton Farm LLC, its General Partner

Sole Members: Anton Pohlmann

Anton Pohlmann

Poultry Investors Group, Inc., an Ohio corporation

By: Anton Pohlmann

CROTON FARM LLC

Anton Pohlmann

Poultry Investors Group, Inc., and Ohio Corporation

By: Anton Pohlmann